

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10588 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUNDEK INDIA LTD.

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners

Mr. Kamal Mehta for the respondents.

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

Date of decision: 18/01/99

ORAL JUDGEMENT : (Per B.C. Patel, J.)

Rule. Mr. Mehta, learned counsel for the respondents waives service of the rule.

2. The petitioners approached this Court with the request to quash and set aside the order at Annexure 'A' passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi on 19.2.1997, on the ground that the order has been passed in his absence and that there was no compliance of the order passed by the Bench. The

Tribunal also observed that despite the notice of hearing issued on 24.1.1997, none had appeared.

3. It is submitted by Mr. Dave, learned advocate that the petitioners deposited a sum of Rs.7,71,356/-. Mr.Mehta, learned counsel appearing for the Department has pointed out that the Tribunal directed to furnish a personal bond of Rs.2,83,000/- within the period of four weeks from the date of communication of the order and the petitioners were required to make a report within the period of five weeks about compliance, failing which as ordered by the Tribunal, the appeal was to be dismissed. It appears that despite opportunity being given to the petitioner, he did not remain present before the Tribunal either personally or through an advocate. The appeal has been dismissed on the ground of non compliance of the statutory requirement of sec.35F and not on merits. Mr. Mehta has fairly pointed out to the Court that a xerox copy of the bond filed before the Tribunal dated 5.4.1992 has been submitted to the Department. He stated this from the file of the Department. It, therefore, appears to us that there is compliance with the order. The Tribunal, therefore, is required to proceed with the hearing of the matter on merits. It is in view of this we are setting aside the order passed by the Tribunal at Annexure 'A' dated 19.2.1997 with a direction to dispose of the appeal in accordance with law.

4. The petition stands allowed with no order as to costs. Rule is made absolute accordingly.

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